

CHAPTER 9

Public Peace, Morals and Welfare

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ARTICLE 9-4

Government and Public Officers

Sec. 9-4-10. Definitions.

(a) A police officer is *acting under color of his or her official authority* when in the course of his or her duties he or she is called upon to make or does in fact make a good faith judgment based on surrounding facts and circumstances that an arrest should be made. It is no defense to a prosecution under this Section and Sections 9-4-40 and 9-4-50 that the arrest was unlawful if the police officer was acting under color of his or her authority and did not use unreasonable or excessive force in effecting the arrest.

(b) The term *police officer*, as used in Sections 9-4-40 and 9-4-50, means any person defined as a police officer by state law who is in uniform or who has displayed his or her credentials to the person whose arrest is attempted.

(c) *Uniform*, as used in Sections 9-4-40 and 9-4-50, refers to the dress or apparel and insignia required to be worn by agents of the Police Department pursuant to the order or direction of the Chief of Police and intended as a means of identifying the police officers and agents of the Police Department. (Prior code §7-452(2), (3), (4); Ord. 878 §1(part), 1976; Ord. 1589, 1999)

Sec. 9-4-20. Threatening City employee or public official.

It is unlawful for any person to communicate threats of violence, reprisal or any other injurious act to any police officer, fireman, City employee or other public official who is engaged in the performance of his or her official duties. (Prior code §7-451(2); Ord. 878 §1(part), 1976; Ord. 1589, 1999)

Sec. 9-4-30. Interference with public official.

It is unlawful for any person to knowingly resist, interfere with, impede or obstruct any police officer, fireman, City employee or other public official who is attempting to discharge or is in the course of discharging an official duty. (Prior code §7-451(1); Ord. 878 §1(part), 1976; Ord. 1589, 1999)

Sec. 9-4-40. Interfering with arresting police officer.

It is unlawful for any person to prevent or attempt to prevent a police officer acting under color of his or her official authority from effecting an arrest of the actor or another by the use or threatened use of force or physical violence or any other means which creates a substantial risk of causing physical injury to such police officer. (Prior code §7-452(1); Ord. 878 §1(part), 1976; Ord. 1589, 1999)

Sec. 9-4-50. Escaping or aiding in escape from custody.

It is unlawful for any person to escape or attempt to escape from, in any manner aid another who is in the custody of a police officer to escape, or attempt to rescue or rescue a person from the custody of a police officer or from the custody of any person aiding such police officer after being commanded by such police officer not to do so. However, the provisions of this Section and Section

9-4-40 shall not apply whenever the escapee is being held on account of a felony or charged with any felony. (Prior code §7-452(5); Ord. 878 §1(part), 1976; Ord. 1589, 1999)

Sec. 9-4-60. Assisting in escape.

It is unlawful to assist or aid any person in the custody of or confined under the authority of the City to escape from place of confinement or custody. (Prior code §7-431; Ord. 1589, 1999)

Sec. 9-4-70. False fire alarm unlawful.

It is unlawful for any person to intentionally make or give a false alarm of fire in this City. (Prior code §7-510; Ord. 1589, 1999)

Sec. 9-4-80. Obeying police officer or fireman.

It is unlawful for any person to knowingly disobey the lawful order of any police officer or fireman given incident to the discharge of the official duties of such police officer or fireman. (Prior code §7-453 (1); Ord. 878 §1(part), 1976; Ord. 1589, 1999)

Sec. 9-4-90. Refusing to aid police officer.

It is unlawful for any person, upon command by a person known to him or her as a police officer, to unreasonably refuse to aid such police officer in effecting or securing an arrest, preventing the commission by another of any offense or coping with any emergency situation. (Prior code §7-453(2); Ord. 878 §1(part), 1976; Ord. 1589, 1999)

Sec. 9-4-100. Contempt of court; penalty.

It is unlawful for any person to be in contempt of the Municipal Court or to fail to obey a lawful notice to appear before the Municipal Court, and any person found by the Municipal Court to be in violation of this Section shall be punished by a fine of not more than three hundred dollars (\$300.00), or by imprisonment not to exceed ninety (90) days, or by both such fine and imprisonment. (Ord. 987 §1(part), 1978; Ord. 1589, 1999)

Sec. 9-4-110. Contempt of court defined.

Any person guilty of misconduct committed in the presence of the Court, guilty of acts constituting a willful and wanton disrespect for the Court or guilty of violating a lawful order of the Court, including a failure to pay a fine imposed by the Court, shall be deemed guilty of contempt of Court and may be brought before the Court by arrest or otherwise and punished as provided in Section 9-4-100 above. (Ord. 987 §1(part), 1978; Ord. 1589, 1999)

Sec. 9-4-120. Aiding and abetting acts.

Every person who attempts to commit, conspires to commit or aids or abets in the commission of any act declared herein to be in violation of this Chapter, whether individually or in connection with one (1) or more other persons, or as a principal agent or accessory, shall be guilty of such offense, and every person who falsely, fraudulently, forcibly or willfully induces, causes, coerces, requires, permits or directs another to violate any provision of this Chapter is likewise guilty of such offense. (Ord. 1100 §1, 1982; Ord. 1589, 1999)

Sec. 9-4-130. Violation; penalty.

Any person found guilty of violating Sections 9-4-20 through 9-4-50, 9-4-80 and 9-4-90 of this Article shall be punished by a fine of not more than three hundred dollars (\$300.00) or by imprisonment not to exceed ninety (90) days or by both such fine and imprisonment. (Ord. 938, 939, 940, 941, 942, 943, 1977; Ord. 1589, 1999)

ARTICLE 9-8

Streets and Public Places

Sec. 9-8-10. Definitions.

(a) As used in this Article, *park* shall mean a parcel of ground located within the City limits, specifically set apart for the recreational use of the public.

(b) As used in this Article, *park facility* shall mean those structures located in a park which aid or make easier the recreational use of the park. (Ord. 1543 §1(part), 1998; Ord. 1589, 1999)

Sec. 9-8-20. Denying use of school property.

(a) It is unlawful for any person on or near the premises or facilities of any educational institution to willfully deny to students, school officials, employees and invitees:

- (1) Lawful freedom of movement on the premises;
- (2) Lawful use of the property or facilities of such institution; or
- (3) The right of lawful ingress and egress to the institution's physical facilities.

(b) It is unlawful for any person on the premises of any educational institution or at or in any building or other facility being used by any educational institution to willfully impede the staff or faculty of such institution in the lawful performance of their duties or willfully impede a student of such institution in the lawful pursuit of his or her educational activities by the use of restraint, coercion or intimidation or when force or violence are present or threatened. (Prior code §7-243(l),(2); Ord. 876 §1(part), 1976; Ord. 1589, 1999)

Sec. 9-8-30. Refusing or failing to leave educational institution.

It is unlawful for any person to willfully refuse or fail to leave the property of or any building or other facility used by any educational institution upon being requested to do by the chief administrative officer, his or her designees charged with maintaining order on the school premises and its facilities or a dean of such educational institution, if such person is committing, threatens to commit or instructs others to commit any act which would disrupt, impair, interfere with or obstruct the lawful missions, processes, procedures or functions of the institution. (Prior code §7-243(3); Ord. 876 §1(part), 1976; Ord. 1589, 1999)

Sec. 9-8-40. Interpretation.

Nothing in Sections 8-20 and 9-8-30 shall be construed to prevent lawful assembly and peaceful and orderly petition for the redress of grievances, including any labor dispute between an educational

institution and its employees, any contractor or subcontractor, or any employee thereof. (Prior code §7-243(4); Ord. 876 §1(part), 1976; Ord. 1589, 1999)

Sec. 9-8-50. Conduct denying lawful use of public building.

(a) It is unlawful for any person to so conduct himself or herself at or in any public building owned, operated or controlled by the City, the State or any of its political subdivisions, including the school district, as to willfully deny to any public official, public employee or any invitee on such premises the lawful right of such official, employee or invitee to enter, use the facilities of or to leave any such public building.

(b) It is unlawful for any person at or in any such public building to willfully impede any public official or employee in the lawful performance of duties or activities through the use of restraint, coercion or intimidation or by force and violence or threat thereof. (Prior code §7-244(1), (2); Ord. 876 §1(part), 1976; Ord. 1589, 1999)

Sec. 9-8-60. Refusing or failing to leave public building.

It is unlawful for any person to willfully refuse or fail to leave any such public building upon being requested to do so by the chief administrative officer charged with maintaining order in such public building if such person has committed, is committing, threatens to commit or incites to commit any act which did or would, if completed, disrupt, impair, interfere with or obstruct the lawful missions, processes, procedures or functions being carried on in such public building. (Prior code §7-244(3); Ord. 876 §1(part), 1976; Ord. 1589, 1999)

Sec. 9-8-70. Impeding or disrupting certain meetings in public buildings.

It is unlawful for any person at any meeting or session conducted by any judicial, legislative or administrative body or official at or in any public building to willfully impede, disrupt or hinder the normal proceedings of such meeting or session by any act or intrusion into the chambers or other areas designated for the use of the body or official conducting such meeting or session or by any act designed to intimidate, coerce or hinder any member of such body or official engaged in the performance of duties of such meeting or mission. (Prior code §7-244(4); Ord. 876 §1(part), 1976; Ord. 1589, 1999)

Sec. 9-8-80. Interfering with use of public way or place.

It is unlawful for any person to be upon any public way or any other place of public nature in such a manner as to willfully interfere with the free and unobstructed use of such public way or place of public nature by any other person. (Prior code §7-245; Ord. 876 §1(part), 1976; Ord. 1589, 1999)

Sec. 9-8-90. Parks and park facilities rules and regulations.

The following rules and regulations shall apply to all parks and park facilities within the City, and it shall be unlawful for any person to violate any of these rules or regulations.

(1) All parks shall be open from 5:00 a.m. to 10:00 p.m. daily. No person shall be in a park, except during those hours, unless as part of an organized program or activity.

(2) No park or park facility shall be used for such activities as dunk tanks, hot air balloons, carnivals, catering services, festivals or other activities which require the use of tents, awnings or rented shelters unless:

- a. A written request for such use is submitted to the Parks and Recreation Director and the Parks and Recreation Director has given written approval for such use;
- b. The park, or portion thereof, has been properly reserved according to City policy;
- c. The reservation fee has been paid; and
- d. A license (if applicable) has been properly applied for and issued.

(3) All persons using a park or park facilities shall abide by any posted rules or guidelines pertaining to the facility.

(4) No vehicles, including campers and motor homes, shall remain in a park from 10:00 p.m. to 5:00 a.m. without the written permission of the Parks and Recreation Director.

(5) Motor vehicles shall be parked or operated only in designated areas. Authorized motorized vehicles only shall be allowed on park trails, pathways or nondesignated areas. No motor vehicles shall exceed a speed of fifteen (15) mph in any park, unless otherwise posted.

(6) No golfing shall be allowed in a park, unless otherwise posted.

(7) No glass containers of any kind shall be permitted in any park, any time.

(8) No person shall commit any act in a park or park facility which would endanger the health, safety or welfare of himself or herself, or other park users.

(9) No park or park facility shall be used for profit or personal gain by any individual, group or organization without the express written authorization of the Parks and Recreation Director.

(10) No pets shall be allowed in a park or park facility unless restrained and controlled by a leash no longer than six (6) feet. Pet waste must be cleaned up and disposed of properly.

(11) No individual, group or organization shall use amplified sound in a park or park facility without the express written authorization of the City Manager, and any such use must conform to Article 8-32 of this Code.

(12) No firearms shall be allowed in any park or park facility.

(13) No person shall release, discharge, drop or spread upon any park or park facility any litter, trash, rubbish, waste, garbage, refuse or ashes, other than by placing the same in trash containers or receptacles.

(14) No horses shall be permitted in parks or on park pathways or trails.

(15) Fires are restricted to designated areas of the park where permanent grills are provided. (Ord. 1543 §1(part), 1998; Ord. 1589, 1999)

Sec. 9-8-100. Destroying public property.

It is unlawful for any person to willfully, maliciously, wantonly, negligently or in any other manner injure or destroy real property or improvements thereto, or movable or personal property, belonging to the City. (Prior code §7-501; Ord. 1589, 1999)

Sec. 9-8-110. Destroying private property.

It is unlawful for any person to willfully, maliciously, wantonly, negligently or in any other manner injure or destroy real property or improvements thereto, or movable or personal property, belonging to any person. (Prior code §7-502; Ord. 1589, 1999)

Sec. 9-8-120. Obstructing or damaging ditches.

It is unlawful for any person to willfully, maliciously, wantonly or negligently fill up, obstruct or otherwise damage any ditch or ditches lawfully constructed in the City. (Prior code §7-503; Ord. 1589, 1999)

Sec. 9-8-130. Defacing or damaging posted advertisement or bill.

It is unlawful for any person to willfully, maliciously, wantonly, negligently or in any other manner tear down, deface or cover up any posted advertisement or bill of any person when the same is posted in accordance with the provisions of this Article and the ordinances of the City. (Prior code §7-504(a); Ord. 1589, 1999)

Sec. 9-8-140. Defacing or posting posters or signs on certain public property.

It is unlawful to deface, scratch, stencil, post or exhibit any posters, signs, placards, advertisements and handbills or painted or printed matter whatever on any utility pole, on public grounds, public rights-of-way and sidewalks. In addition to other remedies, the City may remove the same summarily without notice. (Prior code §7-504(b); Ord. 1589, 1999)

Sec. 9-8-150. Damaging property.

It is unlawful for any person to throw any stone or other missile at or upon any animal, building, electric light fixture, tree or shrub or to willfully injure, deface, mark, mar or destroy any building, structure, fence, enclosure or other improvements, or any trees, shrubs, plants or flowers planted for ornament or shade upon the public or private grounds if such person is not the owner thereof; or to cut, fill, obstruct, or otherwise injure or damage any ditch, drain, sewer, water main or pipe or any sidewalk, bridge or culvert, or to obstruct or in any manner encumber any public street, public alley or public sidewalk. (Prior code §7-509; Ord. 893 §2, 1976; Ord. 1589, 1999)

Sec. 9-8-160. Payment of reward from City funds.

(a) In the event damage is caused to property belonging to the City and a complaint charging a violation of Sections 9-8-100 through 9-8-150 of this Article or any state statute for wrongfully causing such damage is not prosecuted due to the lack of sufficient evidence to identify any defendant, the City shall pay from appropriated City funds the sum of one hundred dollars (\$100.00) to any person who furnishes evidence which leads to the arrest and conviction of any person for wrongfully causing such damage in violation of the provisions of Sections 9-8-100 through 9-8-150 of this Article or any state statute.

(b) The payment provided for in this Section shall be made by the City within thirty (30) days after the final conviction of such defendant, to the individual who is entitled to such payment, in person, upon his or her appearance at the office of the City Manager, at a time designated by the City Manager for such payment.

(c) In the event more than one (1) person provides such information regarding a single incident or a connected series of incidents, the City Manager shall apportion the amount payable under this Section among the individuals providing such information.

(d) In no event shall any person be entitled to any payment under this Section if there exists any collusion or conspiracy with another who is involved in the incident as a participant, witness, reporting party or otherwise.

(e) No person who is a member of any law enforcement agency or an employee of a governmental agency having responsibility for providing the evidence sought under this Section shall be entitled to any payment pursuant to this Section.

(f) The entitlement to payment of such funds as provided for in this Section shall be solely the decision of the City Manager, and such decision shall be final and conclusive with no right of appeal. (Ord. 1017 §1, 1979; Ord. 1589, 1999)

ARTICLE 9-12

Public, Private and Personal Property

Sec. 9-12-10. Acts constituting trespass.

(a) A person is deemed to have committed criminal trespass if said person unlawfully enters or remains in or upon the premises of another. A person unlawfully enters or remains in or upon the premises of another:

(1) If said person is in or upon the premises without permission of the owner, lessee or person with right to possession of said premises; or

(2) As to commercial or industrial premises or a City-owned structure, if the person is in or upon the premises, including off-street parking areas serving the premises, not in the process of conducting business or seeking to conduct business with the owner, lessee or person with right to possession of the premises, or not present by invitation of a person in the process of conducting business or seeking to conduct business on the premises; or

(3) As to public property, if the person is in or upon any premises that is fenced or enclosed or is posted with legible, plainly visible signs containing the words "No Trespassing" or other express statements forbidding entry. Such sign posed on the property of a municipal or quasi-municipal corporation shall contain the name or official symbol of such municipal or quasi-municipal corporation.

(b) A person is deemed to have committed criminal trespass if such person enters or remains in or upon any motor vehicle, motor home, trailer home or trailer of another without permission of the owner. A person unlawfully enters or remains in or upon the motor vehicle, motor home, trailer home or trailer of another:

(1) If said person enters, uses or occupies a motor vehicle, motor home, trailer home or trailer of another person without authority or permission of the owner, lessee or authorized person with right to possession of said motor vehicle, motor home, trailer home or trailer.

(2) It is a specific defense to a charge under this Section that the defendant had permission of the owner or the owner's agent for the entry, that the entry was for a brief period of time to secure the vehicle from harm, or was directed or authorized by a public official.

(3) This Subsection (b) does not apply where the entry was made with the intent to steal anything of value, or where the vehicle was parked on the property of the defendant or of the defendant's principal. (Ord. 1075 §1(part), 1982; Ord. 1589, 1999; Ord. 1699 §1, 2001)

Sec. 9-12-20. Violation and penalty for trespass.

(a) A person who is found guilty or enters a plea of guilty or nolo contendere to violating Section 9-12-10 shall be punished as follows:

(1) For the first offense, a fine of not less than twenty-five dollars (\$25.00) nor more than three hundred dollars (\$300.00);

(2) For the second offense committed within five (5) years of a first offense, a fine of not less than fifty dollars (\$50.00) nor more than three hundred dollars (\$300.00);

(3) For the third and all subsequent offenses committed within five (5) years of the first offense, a minimum penalty of a three-hundred-dollar fine.

(b) The minimum fines imposed by this Section shall be mandatory and the Court shall not suspend a fine, in whole or in part. (Ord. 1075 §1(part) , 1982; Ord. 1589, 1999)

Sec. 9-12-30. Theft.

It is unlawful to commit theft. A person commits theft when that person knowingly obtains or exercises control over a thing of value of another without authorization, or by threat or deception, and:

(1) Intends to deprive the other person permanently of the use or benefit of the thing of value;

(2) Knowingly uses, conceals or abandons the thing of value in such manner as to deprive the other person of its use or benefit;

(3) Uses, conceals or abandons the thing of value intending that such use, concealment or abandonment will deprive the other person of its use and benefit; or

(4) Demands any consideration to which that person is not legally entitled as a condition of restoring the thing of value to the other person. (Ord. 1214 §1 (part), 1986; Ord. 1415 §2(part), 1992; Ord. 1589, 1999)

Sec. 9-12-40. Theft by receiving.

It is unlawful to commit theft by receiving. A person commits theft by receiving if that person obtains control over property, knowing the property to have been stolen from another person, or

obtains control over such property under such circumstances as would reasonably induce such person to believe that the property was stolen. (Ord. 1415 §2(part), 1992; Ord. 1589, 1999)

Sec. 9-12-50. Rights to stolen property.

All property obtained through a violation of this Article shall be restored to the owner, and no sale, whether in good faith on the part of the purchaser or not, shall divest the owner of the right to such property. (Ord. 1214 §1(part), 1986; Ord. 1415 §2(part), 1992; Ord. 1589, 1999)

Sec. 9-12-60. Theft of rental property.

It is unlawful to commit theft of rental property. A person commits theft of rental property if that person obtains the temporary use of property belonging to another which is available for hire or rental:

- (1) By means of threat or deception;
- (2) Knowing that such use is without the consent of the person who provides such property;
or
- (3) Having lawfully obtained possession for temporary use of such property of another which is available for hire or rental, fails to return such property to the owner or the owner's agent within seventy-two (72) hours after the time at which such person agreed to return such property, and thereby deprives the owner of the property of the use or benefit of the property. (Ord. 1415 §2(part), 1992; Ord. 1589, 1999)

Sec. 9-12-70. Theft of food or accommodations.

It is unlawful to commit theft of food or accommodations. A person commits theft of food or accommodations if that person obtains or procures food or accommodations at any establishment, with the intent to defraud. It shall be prima facie evidence that such person intended to defraud such establishment if such person procures food or accommodations without having any means of payment therefor, or exits the building or grounds where such food or accommodations were provided without making payment therefor and without the consent of the operator of such establishment. (Ord. 1415 §2(part), 1992; Ord. 1589, 1999)

Sec. 9-12-80. Shoplifting.

(a) It is unlawful for any person to conceal, or to aid, abet or assist another person in concealing unpurchased goods, products or merchandise that are owned, held or displayed for sale by any retail outlet, store or other mercantile establishment, with the intent to avoid payment therefor. Concealment (whether such concealment is on a person or otherwise, and whether such concealment is on or off the premises of such store or mercantile establishment) shall constitute prima facie evidence that such person intended to avoid payment therefor.

(b) It is unlawful for any person to knowingly carry away, or to aid, abet or assist another person in knowingly carrying away, unpurchased goods, products or merchandise that are owned, held or displayed for sale by any retail outlet, store or other mercantile establishment. The carrying away of unpurchased gasoline or similar fuel products is included within the acts prohibited herein.

(c) The definition of the phrase *carry away* shall include, but shall not be limited to, the exiting towards the outside of any retail outlet, store or other mercantile establishment with any such unpurchased goods. The price marked on any goods, by writing or printing thereon or by a tag or a sticker attached thereto, is prima facie evidence of the value of that item.

(d) It is unlawful for any person to switch, change or alter in any way the price markings on any goods, wares or merchandise offered or displayed for sale by any store or other mercantile establishment with the intent to avoid full payment therefor, or thereby making less than full payment. (Ord. 1187 §1, 1985; Ord. 1415 §1(part), 1992; Ord. 1589, 1999)

Sec. 9-12-90. Questioning by merchant or police officer.

If there is probable cause to believe that a person has committed an offense in violation of Section 9-12-80, a merchant, his or her agent, or any peace or police officer may detain and question the person suspected of such offense for the purpose of ascertaining identification and facts for prosecution. Such detaining and questioning of such suspected person by a merchant, his or her agent or peace or police officer, shall not render such person civilly liable for slander, false arrest, false imprisonment, malicious prosecution, unlawful detention or other cause of action. (Ord. 1187 §2, 1985; Ord. 1415 §1(part), 1992; Ord. 1589, 1999)

Sec. 9-12-100. Value limit.

The City has the concurrent power, with the State, to prohibit theft, by ordinance, with a value of the thing involved less than five hundred dollars (\$500.00). This Article does not apply to things of value of five hundred dollars (\$500.00) or more, and it shall be an affirmative defense to a prosecution under this Article that the thing involved in the theft was valued at five hundred dollars (\$500.00) or more. (Ord. 1415 §2(part), 1992; Ord. 1589, 1999; Ord. 1698 §1, 2001)

Sec. 9-12-110. Graffiti defined.

Graffiti is any marking, symbol, slogan, logo, wording, phrase, name or other extraneous drawing applied to buildings, fences, sidewalks, vehicles or other similar objects, but is not commercial or political advertising. (Ord. 1482 §1(part), 1996; Ord. 1589, 1999)

Sec. 9-12-120. Application of graffiti.

It shall be unlawful for any person to apply graffiti to the property of another within the City. It shall be unlawful for any person to cause, assist or participate with any other person in the application of graffiti to the property of another. (Ord. 1482 §1(part), 1996; Ord. 1589, 1999)

Sec. 9-12-130. Penalties regarding graffiti.

(a) Persons convicted of violation of Section 9-12-120 shall be subject to the penalties provided by this Code and twenty-four (24) hours of community service for each offense. The community service shall be dedicated exclusively to the removal of graffiti. If there is no graffiti in the City to be removed at time of sentencing, another form of useful community service may be substituted for graffiti removal.

(b) The Court shall impose the maximum fine allowed by this Code and at least forty-eight (48) hours of community service, in addition to any jail sentence imposed by the Court, upon any person convicted three (3) or more times of violation of this Section.

(c) There is hereby created the graffiti abatement fund, to be kept separate and apart from the general fund, under the control and supervision of the Municipal Court Clerk where all graffiti abatement fund fees shall be deposited.

(d) In addition to any other penalty imposed by the Court, the Court shall order a convicted defendant under this Section to pay two hundred fifty dollars (\$250.00) for each location of occurrence into the graffiti abatement fund, unless the actual costs of abatement of the graffiti placed in that case exceeds two hundred fifty dollars (\$250.00), in which event the Court shall order the full amount of the costs of abatement paid into the graffiti abatement fund by that defendant. The amount due the abatement fund by the defendant for a second conviction is five hundred dollars (\$500.00) and for a third and subsequent conviction, one thousand dollars (\$1,000.00). If the person convicted is under eighteen (18) years of age, that person's parent or parents or legal guardian or guardians shall also be responsible for payment to the graffiti abatement fund fee in the nature of civil damages, as applying graffiti is a deliberate, willful and malicious act. (Ord. 1482 §1(part), 1996; Ord. 1589, 1999)

Sec. 9-12-140. Declaration of public nuisance.

Any property upon which graffiti has been placed, and which graffiti is visible to the public view, is hereby declared to be a public nuisance and, in the interest of public health, safety and general welfare, shall be abated as set forth herein. (Ord. 1483 §1(part), 1996; Ord. 1589, 1999)

Sec. 9-12-150. Graffiti removal; notification.

(a) A copy of the police report documenting the graffiti shall be forwarded to the Code Enforcement Division of the City. Upon receipt thereof, the Code Enforcement Division shall send written notice to the property owner or current tenant of the property upon which the graffiti has been placed. If the graffiti is placed upon City property, the Code Enforcement Division shall notify the appropriate City department responsible for graffiti removal.

(b) The written notice shall require that the graffiti be removed or eradicated within fifteen (15) days from the date of the notice. Inclement weather or other legitimate hardship may extend this deadline if the responsible property owner petitions the Code Enforcement Division in writing prior to the initial deadline. The written notice by the Code Enforcement Division shall inform the recipient of the existence of the graffiti abatement fund and the procedures and timelines for requesting reimbursement from the fund. The notice shall also indicate that any graffiti on any structure, fence, wall or sign is deemed to be a public nuisance.

(c) The property owner, tenant or person having control or possession of the property shall remove or eradicate the graffiti within the time indicated on the notice.

(d) If the graffiti is not timely removed or eradicated, the City shall have the authority to remove or eradicate it and shall have access to the property to do so. The City shall collect from the property owner, tenant or person having control or possession of the property the labor and materials costs incurred for the removal or eradication.

(e) If the property owner, tenant or person having control or possession of the premises removes the graffiti, he or she may file with the City a written request for reimbursement from the graffiti abatement fund, as follows:

(1) If removed within the fifteen-day deadline, reimbursement may be applied for, for both labor and materials costs, up to a total reimbursement of one hundred fifty dollars (\$150.00).

(2) Receipts for expenses must accompany reimbursement requests.

(3) The Code Enforcement Division may, at its discretion, extend, in writing, the deadlines set forth herein, on account of inclement weather or other legitimate hardship which may delay timely removal or eradication of the graffiti. (Ord. 1483 §1(part), 1996; Ord. 1589, 1999)

Sec. 9-12-160. Violation; penalty.

Every person found guilty of a violation of any provision of this Article shall be punishable as provided by Article 1-24 of this Code. (Prior code §7-A510(e); Ord. 816 §1, 1975; Ord. 1415 §1(part), 1992; Ord. 1589, 1999)

ARTICLE 9-16

Public Peace, Order and Decency

Sec. 9-16-10. Definitions.

The following definitions shall apply in the interpretation and enforcement of this Article:

(1) *Bawdy house* or *house of assignation* means a house or place kept for the shelter and convenience of persons desiring unlawful sexual intercourse or other unlawful physical sexual activity and where such intercourse or activity is practiced.

(2) *Check* means a written unconditional order to pay a sum certain in money, drawn on a bank or savings and loan association, payable on demand, and signed by the drawer. *Check* also includes a negotiable order of withdrawal and a share draft.

(3) *Drawee* means the bank or savings and loan association upon which a check is drawn or a bank, savings and loan association, industrial bank or credit union on which a negotiable order of withdrawal or a share draft is drawn.

(4) *Drawer* means a person, either real or fictitious, whose name appears on a check as the primary obligor, whether the actual signature is that of himself or herself or of a person authorized to draw the check on himself or herself.

(5) *House of prostitution* means a house or place kept or resorted to for the purpose of prostitution.

(6) *Insufficient funds* means a drawer has insufficient funds with the drawee to pay a check when the drawer has no checking account, negotiable order of withdrawal account or share draft account with the drawee or has funds in such an account with the drawee in an amount less than the amount of the check plus the amount of all other checks outstanding at the time of issuance; and a check dishonored for *no account* shall also be deemed to be dishonored for *insufficient funds*.

(7) *Issue* means when a person makes or draws a check and delivers, or passes it out of his or her possession or causes it to be made, drawn, delivered or passed out of his or her possession.

(8) *Lewd act* means an indecent appearance in the state of nudity. Such term includes indecent exposure of the private parts in a place open to the public view.

(9) *Loiter* means to be dilatory, to stand idly around, to linger, delay or wander about, or to remain, abide or tarry in a public place.

(10) *Meretricious display* means any act, sign, gesture or manifestation which allures or is calculated to allure, entices or is calculated to entice, by a false show, gaudiness, tawdry ornamentation or lascivious suggestion for purposes of prostitution.

(11) *Negotiable order of withdrawal* and *share draft* mean negotiable or transferable instruments drawn on a negotiable order of withdrawal account or a share draft account, as the case may be, for the purpose of making payments to third persons or otherwise.

(12) *Negotiable order of withdrawal account* means an account in a bank, savings and loan association or industrial bank, and *share draft account* means an account in a credit union, on which payment of interest or dividends may be made on a deposit with respect to which the bank, savings and loan association, industrial bank or the credit union, as the case may be, may require the depositor to give notice of an intended withdrawal not less than thirty (30) days before the withdrawal is made, even though in practice such notice is not required and the depositor is allowed to make withdrawal by negotiable order of withdrawal or share draft.

(13) *Prostitute* means one who engages in prostitution as defined in this Section.

(14) *Prostitution* includes the offering or receiving of the body for sexual intercourse or other physical sexual activity for hire. (Ord. 954 §1(part), 1977; Ord. 1115 §1(part), 1982; Ord. 1186 §2(part), 1985; Ord. 1589, 1999)

Sec. 9-16-20. Disorderly conduct.

It is unlawful for any person to disturb or to tend to disturb peace of others by violent, tumultuous, offensive or obstreperous conduct, by loud or unusual noises by unseemly, profane, obscene or offensive language calculated to provoke a breach of the peace; or by assaulting, striking or fighting another; or for any person to permit any such conduct in any house or upon any premises owned or possessed by him or her or under his or her management or control, when the prohibition of such acts is within his or her power to prevent, so that others in the vicinity are or may be disturbed thereby. (Ord. 986 §1, 1978; Ord. 1589, 1999)

Sec. 9-16-30. Keeping bawdy house or house of prostitution.

It is unlawful for any person to keep a bawdy house or house of prostitution within the City. (Ord. 1115 §1(part), 1982; Ord. 1589, 1999)

Sec. 9-16-40. Offenses relating to prostitution and lewdness.

It is unlawful for any person to:

- (1) Commit, offer or agree to commit a lewd act or an act of prostitution;
- (2) Secure or offer another for the purpose of committing a lewd act or an act of prostitution;

(3) Be in or near any place frequented by the public, or any public place, for the purpose of inducing, enticing or procuring another to commit a lewd act or an act of prostitution;

(4) Make a meretricious display in any public place, any place frequented by the public or any place open to the public view;

(5) Transport knowingly any person to any place for the purpose of committing a lewd act or an act of prostitution;

(6) Receive, offer or agree to receive knowingly any person into any place or building for the purpose of performing a lewd act or an act of prostitution, or permit knowingly any person to remain in any place or building for any such purpose;

(7) Direct, offer or agree to direct any person to any place or building for the purpose of committing any lewd act or act of prostitution; or

(8) In any manner aid, abet, suffer, permit or participate in the doing of any of the acts prohibited by this Section. (Ord. 1115 §1(part), 1982; Ord. 1589, 1999)

Sec. 9-16-50. Obscene language or gestures.

It is unlawful for any person to:

(1) Use abusive, indecent, profane or vulgar language in a public place if such language, by its very utterance, tends to incite an immediate breach of the peace; or

(2) Make an offensive gesture or display in a public place, if such gesture or display intends to incite an immediate breach of the peace. (Ord. 1115 §1(part), 1982; Ord. 1589, 1999)

Sec. 9-16-60. Intentional bodily injury.

It is unlawful for any person to intentionally cause bodily injury to another person; provided, however, that this Section shall not apply to injury caused by means of a deadly weapon, nor shall it apply in the event of serious bodily injury. (Prior code §7-413(l); Ord. 880 §1(part), 1976; Ord. 1589, 1999)

Sec. 9-16-70. Bodily injury; criminal negligence.

It is unlawful for any person with criminal negligence to cause bodily injury to another person by means of a deadly weapon. (Prior code §7-413(3); Ord. 880 §1(part), 1976; Ord. 1589, 1999)

Sec. 9-16-80. Intimidation.

It is unlawful for any person without legal authority to threaten, confine, restrain or cause bodily harm to the threatened person or another or damage the property or reputation of the threatened person of another with intent thereby to induce the threatened person of another against his or her will to do an act or refrain from doing a lawful act. (Prior code §7-415; Ord. 880 §1(part), 1976; Ord. 1589, 1999)

Sec. 9-16-90. Harassment.

(a) It is unlawful for any person, with the intent to harass, annoy or alarm another person, to:

- (1) Strike, shove, kick or otherwise harm a person or subject him or her to physical contact;
- (2) In a public place, direct obscene language or make an obscene gesture to or at another person;
- (3) Follow a person in or about in a public place;
- (4) Initiate communication with a person, anonymously or otherwise by telephone, in a manner intended to harass or threaten bodily injury or property damage, or make any comment, request, suggestion or proposal by telephone which is obscene;
- (5) Make a telephone call or cause a telephone to ring repeatedly, whether or not a conversation ensues, with no purpose of legitimate conversation;
- (6) Make repeated communications at inconvenient hours that invade the privacy of another and interfere in the use and enjoyment of another's home or private residence or other private property; or
- (7) Repeatedly insult, taunt, challenge or make communications in offensively coarse language to, another in a manner likely to provoke a violent or disorderly response.

(b) As used in this Section, unless the context otherwise requires, *obscene* means a patently offensive description of ultimate sexual acts or solicitation to commit ultimate sexual acts, whether or not said ultimate sexual acts are normal or perverted, actual or simulated, including masturbation, cunnilingus, fellatio, anilingus or excretory functions.

(c) Any act prohibited by Subsection (a)(4) above may be deemed to have occurred or to have been committed at the place at which the telephone call was either made or received. (Prior code §7-418; Ord. 880 §1(part), 1976; Ord. 1589, 1999)

Sec. 9-16-100. Threatening physical injury.

It is unlawful for any person to intentionally place or attempt to place another person in fear of imminent serious bodily injury by any threat or physical action; provided, however, that if such be with the use of a deadly weapon, then this Section shall not apply. (Prior code §7-414; Ord. 880 §1(part), 1976; Ord. 1589, 1999)

Sec. 9-16-110. Loitering prohibited.

A person shall be deemed in violation of this Article if he or she:

- (1) Loiters for the purpose of begging;
- (2) Loiters for the purpose of unlawful gambling with cards, dice or other gambling paraphernalia;
- (3) Lingers for the purpose of engaging or soliciting another person to engage in prostitution or deviate sexual intercourse;
- (4) Loiters in or about a school building or grounds not having any reason or relationship involving custody of or responsibility for a pupil or any other specific legitimate reason for being there and not having written permission from a school administrator;

(5) Loiters with one (1) or more persons for the purpose of unlawfully using or possessing a narcotic or dangerous drug.

(6) Loiters in or about any place or building owned or maintained by a governmental entity supported by general property taxes without any specific legitimate reason for being there and not having permission from any representative of such governmental entity responsible for the maintenance of such premises;

(7) Loiters in or about any place or building owned or maintained by any religious organization without any specific legitimate reason for being there and not having permission from any representative of such religious organization responsible for the maintenance of such premises; provided that prior to enforcement of this Subsection as to property of any religious organization, such religious organization must first file with the Chief of Police a written request for the enforcement of this Article as to the property of such religious organization. (Ord. 954 §1(part), 1977; Ord. 1589, 1999)

Sec. 9-16-120. Exemptions to loitering.

It shall be an affirmative defense to a conviction under Section 9-16-110 above that the defendant's acts were lawful and he or she was exercising his or her right of lawful assembly as a part of a peaceful and orderly petition for the redress of grievances either in the course of labor disputes or otherwise. (Ord. 954 §1(part), 1977; Ord. 1589, 1999)

Sec. 9-16-130. Unlawful use of missiles.

It shall be unlawful for any person to knowingly project any missile toward any vehicle; or toward any person, animal, structure or object in a manner that causes or has substantial risk of causing, injury or damage. As used herein, the phrase *missile* includes BBs, eggs, pellets, darts, snowballs, stones or other such objects. As used herein, the word *project* includes throwing, slinging, dropping or shooting. (Ord. 1408, 1992; Ord. 1589, 1999)

Sec. 9-16-140. Fraud by check.

It is unlawful to commit fraud by check. Any person, knowing he or she has insufficient funds with the drawee, who with intent to defraud, issues a check for less than three hundred dollars (\$300.00) for the payment of services, wages, salaries, commissions, labor, money, property or other thing of value commits fraud by check. (Ord. 1186 §2(part), 1985; Ord. 1589, 1999)

Sec. 9-16-150. Deferred prosecution or judgment; probation.

If deferred prosecution, deferred judgment or probation is ordered as a result of a violation of Section 9-16-140 above, the Court, as a condition of supervision, may require the defendant to make restitution on all checks issued by the defendant which are unpaid as of the date of commencement of the supervision, in addition to other terms and conditions appropriate for treatment or rehabilitation of the defendant. (Ord. 1186 §2(part), 1985; Ord. 1589, 1999)

Sec. 9-16-160. Release of information.

A bank, savings and loan association, industrial bank or credit union shall not be civilly or criminally liable for releasing information relating to the drawer's account to a police officer of the City investigating a violation of this Section. (Ord. 1186 §2(part), 1985; Ord. 1589, 1999)

Sec. 9-16-170. Presumption of culpable mental state.

A conviction pursuant to Section 9-16-140 requires the prosecution to establish the required culpable mental state of the issuer; however, for purposes of Section 9-16-140, the issuer's knowledge of insufficient funds is presumed, except in the case of a postdated check or order, if: (1) he or she has no account upon which the check or order is drawn with the bank or other drawee at the time he or she issues the check or order; or (2) he or she has insufficient funds upon deposit with the bank or other drawee to pay the check or order, on presentation within thirty (30) days after issue. (Ord. 1186 §2(part), 1985; Ord. 1589, 1999)

Sec. 9-16-180. Recovery of costs.

If a person institutes or causes to be instituted a prosecution for violation of this Section and shall thereafter fail to cooperate in the full prosecution of the alleged offender without reasonable cause, the Court having jurisdiction, on motion of the prosecuting attorney appearing therein, and after notice to such person and an opportunity to be heard, may give judgment against such person and in favor of the City for all costs of the prosecution, including a reasonable allowance for the time of the prosecuting attorney. (Ord. 1186 §1(part), 1985; Ord. 1589, 1999)

ARTICLE 9-20

Minors

Sec. 9-20-10. Curfew for persons under sixteen years.

It is unlawful for any person under the age of sixteen (16) years to remain or loiter upon any street, alley or other public place or way subsequent to the hour of 11:00 p.m. or prior to the hour of 5:00 a.m., except for lawful employment or except where there exists a reasonable necessity therefor or except where such person is accompanied by the parent, guardian or other person of the age of twenty-one (21) years, having permission of the parent or guardian who has the care and custody of such child; provided, however, that on Friday and Saturday nights of each week, the curfew provided for in this Section shall be extended to 1:00 a.m. with permission of the parents or guardian of such child. (Prior code §7-105; Ord. 877 §1(part), 1976; Ord. 1589, 1999)

Sec. 9-20-20. Parent or guardian responsibility.

It is unlawful for any parent, guardian or other person having care or custody of any child under the age of sixteen (16) years to allow or permit any such child to remain or loiter on any public street, alley or other public way or place subsequent to the hour of 11:00 p.m. or prior to the hour of 5:00 a.m., except for lawful employment, or except where there exists a reasonable necessity therefor or except where such child is accompanied by his or her parent, guardian or other person of the age of twenty-one (21) years having permission from the parent or guardian who has the care and custody of such child; provided, however, that on Friday and Saturday nights of each week, the hour of curfew provided for in this Section shall be extended to 1:00 a.m. with permission of the parent or guardian of such child. (Prior code §7-104; Ord. 877 §1(part), 1976; Ord. 1589, 1999)

Sec. 9-20-30. Violation; penalty.

(a) Any person under the age of sixteen (16) years violating any of the provisions of this Article, upon conviction thereof, shall be punished by a fine not exceeding three hundred dollars (\$300.00).

(b) Any other person violating any of the provisions of this Article, upon conviction thereof, shall be punishable as provided in Article 1-24 of this Code. (Prior code §7-106; Ord. 877 §1(part), 1976; Ord. 1589, 1999)

ARTICLE 9-24

Alcoholic Beverages

Sec. 9-24-10. Definitions.

The following definitions shall apply in the interpretation and enforcement of this Article:

(1) *Alcoholic beverages* means any malt, vinous or spirituous liquor or fermented malt beverage, including any type of beer. In addition to any other competent evidence, a label on a container, stating the contents of that container is beer, ale, malt beverage, fermented malt beverage, malt liquor, wine, champagne, whiskey, gin, vodka, tequila, schnapps, brandy, cognac, liqueur, cordial alcohol or liquor, whether observed and testified to by a witness or introduced physically into evidence, shall be admissible evidence and shall constitute prima facie evidence that the contents of the container were composed in whole or in part of alcoholic beverages.

(2) *Licensed premises* is defined as the structure within which the establishment does business, together with parking areas adjacent thereto.

(3) *Possession* means that a person has an alcoholic beverage anywhere on his or her person or within his or her immediate presence and control. An alcoholic beverage in the interior of a motor vehicle is within the immediate presence and control of all persons in that motor vehicle unless such alcoholic beverage is in a closed compartment, in which case the driver of the vehicle is the person who is in possession and control of the alcoholic beverage.

(4) *Quasi-public place* is defined as a building, driveway or parking area not owned by a governmental entity which is open to the public and is not licensed pursuant to the liquor or fermented malt beverage laws of the State. (Ord. 974 §1(D), 1978; Ord. 1025 §1(part), 1980; Ord. 1490 §1(part), 1996; Ord. 1589, 1999)

Sec. 9-24-20. Consumption prohibited.

(a) It is unlawful for any person to consume within the City any malt, vinous or spirituous liquors or fermented malt beverages while operating or riding as a passenger in any motor vehicle or in or upon any quasi-public place, street, alley, highway, sidewalk, place or building owned or maintained by any governmental entity supported by general property taxes, except in public parks in the City. In public parks, such consumption shall be permitted only during the hours of 8:00 a.m. to 10:00 p.m.

(b) It is unlawful for any person to consume within the City any malt, vinous or spirituous liquors or fermented malt beverages upon any property owned or maintained by a religious organization in the City; provided that such religious organization shall first have filed with the Chief of Police a written request for the enforcement of this Article as to the property of such a religious organization. (Ord. 1025 §1(part), 1980; Ord. 1589, 1999)

Sec. 9-24-30. Open containers prohibited.

It is unlawful for any person to have in his or her possession any open container containing any malt, vinous or spirituous liquor or fermented malt beverage while operating or riding as a passenger in any motor vehicle, or in or upon any quasi-public place, street, alley, highway, sidewalk, place or building owned or maintained by any governmental entity supported by general property taxes, except in public parks in the City. In public parks the possession of such open containers shall be permitted only during the hours of 8:00 a.m. to 10:00 p.m. (Ord. 1025 §1(part), 1980; Ord. 1589, 1999)

Sec. 9-24-40. Alcoholic beverages and minors.

(a) Providing to minors. It shall be unlawful for any person to sell, serve, give away, dispose of, exchange, deliver or permit the sale, serving, giving or procuring of any alcoholic beverages to or for any person under the age of twenty-one (21) years.

(b) Minors obtaining. It shall be unlawful for any person under twenty-one (21) years of age to obtain or attempt to obtain alcoholic beverages by misrepresentation of age or by any other method in any place where alcoholic beverages are sold.

(c) Minors not to possess or consume. It shall be unlawful for any person under twenty-one (21) years of age to have in his or her possession alcoholic beverages at any place within the City, whether public or private. It shall be unlawful for any person under twenty-one (21) years of age to be in any motor vehicle or in or upon any public or quasi-public place (such as a public parking lot), street, alley, highway, sidewalk or public building or place, such as a public park, after having consumed any alcoholic beverage. Evidence of consumption may include the odor of an alcoholic beverage on a person's breath, loss of balance or coordination shown by physical sobriety test and other recognized and accepted effects of the consumption of alcohol. It shall be an affirmative defense to the offense described herein that the alcoholic beverages were possessed or consumed with the consent of his or her parent or legal guardian who was present during such possession or consumption; or the possession or consumption of alcoholic beverages took place for religious purposes protected by the Constitution of the United States or the State; or the person is eighteen (18), nineteen (19) or twenty (20) years old and the possession was solely for the purpose of selling or dispensing alcoholic beverages at a licensed establishment.

(d) Immediately upon a plea of guilty or no contest or a verdict of guilty by the Court or a jury to violation of Subsection (b) or (c) herein occurring in any public place including public streets, alleys, roads or highways, upon property owned by the State or any subdivision thereof, including the City, or inside vehicles while upon the public streets, alleys, roads or highways, in addition to any other penalty, the Court shall require the convicted person to immediately surrender his or her driver's license (or permit, minor's driver's license or provisional driver's license) to the Court. The Court shall forward to the Colorado Department of Revenue, Motor Vehicle Division, a notice of conviction, together with the convicted person's license, not later than ten (10) days after the conviction, except as provided below, for mandatory revocation purposes pursuant to Sections 42-2-131 and 42-2-125(1)(m), C.R.S.

(e) It is unlawful for any person to fail to surrender his or her driver's license to the Court within twenty-four (24) hours of his or her plea of guilty or no contest or verdict of guilty to a violation of Subsections (b) and (c) of this Section.

(f) Parent's responsibility: It shall be unlawful for any parent or guardian, knowingly or under conditions a reasonable parent or guardian should have knowledge of, to suffer or permit any minor of whom he or she may be a parent or guardian, to violate the provisions of this Article. (Ord. 1490 §1(part), 1996; Ord. 1520 §1, 1997; Ord. 1589, 1999)

Sec. 9-24-50. Ejection from premises authorized.

Owners, managers or persons in charge of establishments which have been licensed by the City to dispense malt, vinous or spirituous liquors or fermented malt beverages are empowered to order or require any person, for good cause, to leave the licensed premises of such owner, manager or person in charge and/or to permanently prohibit any person, for good cause, from reentering the licensed premises. (Ord. 974 §1(A), 1978; Ord. 1589, 1999)

Sec. 9-24-60. Causes for ejection designated.

Good cause for ejection from the licensed premises, as used in this Article, shall include:

- (1) Failure to promptly pay the amount charged for goods or services rendered upon the premises;
- (2) Engaging in harassment, disorderly conduct or disturbance of the peace upon the premises;
- (3) Engaging in conduct violating any law of the State or ordinance of the City;
- (4) Being intoxicated upon the premises; and
- (5) Having in the past maintained a course of conduct on the licensed premises which constitutes good cause for ejection from the premises as defined in this Section. (Ord. 974 §1(C), 1978; Ord. 1589, 1999)

Sec. 9-24-70. Entering or remaining upon premises.

It is unlawful -for any person to enter upon or remain upon the premises of an establishment licensed by the City to dispense malt, vinous or spirituous liquors or fermented malt beverages when that person has, for good cause, been ordered to leave the licensed premises by the owner, manager or person in charge of such licensed premises, or has been prohibited, for good cause, from returning to the licensed premises by the owner, manager or person in charge of such licensed premises. (Ord. 974 §1(B), 1978; Ord. 1589, 1999)

Sec. 9-24-80. Discrimination prohibited.

Nothing in this Article shall be deemed to permit or condone discrimination based on race, creed, color, sex, national origin, ancestry, physical handicap or any other basis which would constitute a violation of the civil rights of any individual. (Ord. 974 §1(E) , 1978; Ord. 1589, 1999)

ARTICLE 9-28

Drugs and Drug Paraphernalia

Sec. 9-28-10. Legislative declaration.

The City Council hereby finds and declares that the possession, sale, manufacture, delivery or advertisement of drug paraphernalia results in the legitimization and encouragement of the illegal use of controlled substances by making the drug culture more visible and enticing and that the ready availability of drug paraphernalia tends to promote, suggest or increase public acceptability of the illegal use of controlled substances. Therefore, the purposes of the provisions controlling drug paraphernalia are:

- (1) To protect and promote the public peace, health, safety and welfare by prohibiting the possession, sale, manufacture, delivery or advertisement, of drug paraphernalia; and
- (2) To deter the use of controlled substances by controlling the drug paraphernalia associated with their use. (Ord. 1444 §1, 1993; Ord. 1589, 1999)

Sec. 9-28-20. Definitions.

As used in this Article, unless the context otherwise requires:

(1) *Drug paraphernalia* means all equipment, products and materials of any kind which are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance (as defined in Section 18-18-101 et seq., C.R.S., including marihuana, marihuana concentrate, hashish, cocaine, crack cocaine, opium and opium derivatives) in violation of the laws of this State. *Drug paraphernalia* includes, but is not limited to:

- a. Testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances under circumstances in violation of the laws of this State;
- b. Scales and balances used, intended for use or designed for use in weighing or measuring controlled substances;
- c. Separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from or in otherwise cleaning or refining marihuana;
- d. Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances;
- e. Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances;
- f. Containers and other objects used, intended for use or designed for use in storing or concealing controlled substances; or

g. Objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marihuana, cocaine, hashish or hashish oil into the human body, such as:

1. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;
2. Water pipes;
3. Carburetion tubes and devices;
4. Smoking and carburetion masks;
5. Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette that has become too small or too short to be held in the hand;
6. Miniature cocaine spoons and cocaine vials;
7. Chamber pipes;
8. Carburetor pipes;
9. Electric pipes;
10. Air-driven pipes;
11. Chillums;
12. Bongs; or
13. Ice pipes or chillers.

(2) *Marihuana* or *marijuana* means all parts of the plant *Cannabis sativa L.*, whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin. It does not include fiber produced from the stalks, oil or cake made from the seeds of the plant, or sterilized seed of the plant which is incapable of germination, if these items exist apart from any other item defined as *marihuana* in this Section. *Marihuana* does not include marihuana concentrate as defined in Subsection 18-18-102(19), C.R.S. (Ord. 1444 §1, 1993; Ord. 1589, 1999)

Sec. 9-28-30. Determination; considerations.

(a) In determining whether an object is drug paraphernalia, a court, in its discretion, may consider, in addition to all other relevant factors, the following:

- (1) Statements by an owner or by anyone in control of the object concerning its use;
- (2) The proximity of the object to controlled substances (as defined in Section 18-18-101 et seq., C.R.S., including marihuana, marihuana concentrate, hashish, cocaine, crack cocaine, opium and opium derivatives);
- (3) The existence of any residue of controlled substances on the object;

(4) Direct or circumstantial evidence of the knowledge of an owner, or of anyone in control of the object, or evidence that such person reasonably should know, that it will be delivered to persons who he or she knows or reasonably should know, could use the object to facilitate a violation of this Article.

(5) Instructions, oral or written, provided with the object concerning its use;

(6) Descriptive materials accompanying the object which explain or depict its use;

(7) National or local advertising concerning its use;

(8) The manner in which the object is displayed for sale;

(9) Whether the owner, or anyone in control of the object, is a supplier of like or related items to the community for legal purposes, such as an authorized distributor or dealer of tobacco products;

(10) The existence and scope of legal uses of the object in the community; and

(11) Expert testimony concerning its use.

(b) In the event a case brought pursuant to this Article is tried before a jury, the Court shall hold an evidentiary hearing on issues raised pursuant to this Article. Such hearing shall be conducted in camera. (Ord. 1444 §1, 1993; Ord. 1589, 1999)

Sec. 9-28-40. Penalty for possession.

(a) A person commits possession of drug paraphernalia if he or she possesses drug paraphernalia and knows or reasonably should know that the drug paraphernalia could be used under circumstances in violation of the laws of this State.

(b) Any person who commits possession of drug paraphernalia commits a violation of this Code. (Ord. 1444 §1, 1993; Ord. 1589, 1999)

Sec. 9-28-50. Manufacture, sale or delivery of drug paraphernalia.

Any person who sells or delivers, possesses with intent to sell or deliver, or manufactures with intent to sell or deliver equipment, products or materials knowing, or under circumstances where one reasonably should know, that such equipment, products or materials could be used as drug paraphernalia commits a violation of this Code. (Ord. 1444 §1, 1993; Ord. 1589, 1999)

Sec. 9-28-60. Advertisement of drug paraphernalia.

Any person who places an advertisement in any newspaper, magazine, handbill or other publication and who intends thereby to promote the sale in this City of equipment, products or materials designed and intended for use as drug paraphernalia commits a violation of this Code. (Ord. 1444 §1, 1993; Ord. 1589, 1999)

Sec. 9-28-70. Defenses.

The common law defense known as the *procuring agent defense* is not a defense to any crime in this Article. (Ord. 1444 §1, 1993; Ord. 1589, 1999)

Sec. 9-28-80. Offenses relating to marihuana.

(a) Any person who possesses not more than one (1) ounce of marihuana commits a violation of this Code.

(b) Any person who openly and publicly displays, consumes or uses not more than one (1) ounce of marihuana commits a violation of this Code and, upon conviction thereof, shall be punished, at a minimum, by a fine of not less than one hundred dollars (\$100.00) and by up to one (1) year in jail.

(c) Transferring or dispensing not more than one (1) ounce of marihuana from one (1) person to another for no consideration shall be deemed possession and not dispensing or sale thereof.

(d) The provisions of this Article shall not apply to any person who possesses, uses, prescribes, dispenses or administers marihuana or marihuana concentrate pursuant to the "Dangerous Drugs Therapeutic Research Act," Part 9 of Article 5 of Title 25, C.R.S., or who possesses, uses, prescribes, dispenses or administers any drug classified under Group C guidelines of the National Cancer Institute, as amended, approved by the Federal Food and Drug Administration.

(e) The provisions of this Article shall not apply to any person who possesses, uses, prescribes, dispenses or administers dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States Food and Drug Administration approved drug product, pursuant to Part 3 of Article 22 of Title 12, C.R.S.

(f) The Municipal Court does not have jurisdiction to hear cases classified as felonies by state statute. Therefore, this Article shall not apply to violations specified as felonies in Section 18-18-406, C.R.S. (Ord. 1444 §1, 1993; Ord. 1589, 1999)

Sec. 9-28-90. Abusing toxic vapors.

(a) No person shall knowingly smell or inhale the fumes of toxic vapors for the purpose of causing a condition of euphoria, excitement, exhilaration, stupefaction or dulled senses of the nervous system. No person shall knowingly possess, buy or use any such substance for the purposes described in this Subsection, nor shall any person knowingly aid any other person to use any such substance for the purposes described in this Subsection. This Subsection shall not apply to the inhalation of anesthesia or other substances for medical or dental purposes.

(b) For the purposes of this Section, the term *toxic vapors* means the following substances or products containing such substances:

- (1) Alcohols, including methyl, isopropyl, propyl or butyl;
- (2) Aliphatic acetates, including ethyl, methyl, propyl, or methyl cellosolve acetate;
- (3) Acetone;
- (4) Benzene;
- (5) Carbon tetrachloride;
- (6) Cyclohexane;

- (7) Freons, including Freon 11 and Freon 12;
- (8) Hexane;
- (9) Methyl ethyl ketone;
- (10) Methyl isobutyl ketone;
- (11) Naphtha;
- (12) Perchlorethylene;
- (13) Toluene;
- (14) Trichloroethane; or
- (15) Xylene.

(c) In a prosecution for a violation of this Article, evidence that a container lists one (1) or more of the substances described in Subsection (b) of this Section as one (1) of its ingredients shall be prima facie evidence that the substance in such container contains toxic vapors and emits the fumes thereof. (Ord. 1444 §1, 1993; Ord. 1589, 1999)

ARTICLE 9-32

Weapons

Sec. 9-32-10. Discharging gun or bow.

It is unlawful for any person, except a law enforcement officer in the performance of his or her duties, to fire or discharge a revolver or pistol of any description, shotgun, rifle, air gun, gas-operated gun, spring gun or any bow made for the purpose of throwing or projecting missiles of any kind by any means whatsoever within the City limits, whether such instrument is called by any name set forth herein or by any other name; provided, however, that nothing in this Section shall prevent the use of any such weapon in a City-approved shooting gallery. (Prior code §7-416; Ord. 880 §1(part), 1976; Ord. 1589, 1999)

Sec. 9-32-20. Carrying dangerous weapons; forfeiture.

(a) Except as provided in Section 9-32-30, it is unlawful for any person within the City to carry, use or wear any dangerous or deadly weapon, including but not by way of limitation, any pistol, revolver, rifle, shotgun, brass or artificial knuckles of any substances whatsoever, nunchakus, or any knife having a blade greater than three and one-half (3½) inches in length or any knife having an appearance of a pocketknife, the blade of which can be opened by a flick of a button, pressure on the handle or other mechanical device.

(b) In addition to any other penalty imposed by law, every person convicted of any violation of this Section may be required to forfeit to the City such dangerous or deadly weapon.

(c) Nothing in this Section shall be construed to prohibit any law enforcement officer from carrying, wearing or using such weapon as shall be necessary in the proper discharge of his or her duties. (Ord. 1024 §1(part), 1980; Ord. 1589, 1999)

Sec. 9-32-30. Affirmative defenses.

It shall be an affirmative defense to any charge brought under Section 9-32-20 of this Article that the weapon is or was carried by a person:

- (1) In a private automobile or other private means of conveyance for lawful protection of his, her or another's person or property while traveling away from the area of his or her residence or business;
- (2) In his or her own dwelling or place of business or on property owned or under his or her control at the time of the act of carrying such weapon;
- (3) After he or she was duly issued a permit to carry a weapon by the Chief of Police and the carrying of such weapon is within the terms of such permit;
- (4) In aid of a civil power when legally summoned thereto;
- (5) For use in the course of a bona fide hunting trip for wild game or for transportation in the legitimate sporting use of such weapons, including shooting matches or other target shooting or trap or skeet shooting; provided, however, that all such weapons when so used shall be unloaded when carried or transported to or from such hunting trip or place of sporting use;
- (6) When such person is transporting such weapon for display, sale or repair to or from a place of display, sale or repair; provided, however, that all such firearms so displayed or transported shall be unloaded at all times;
- (7) When such person is a member of the armed forces of the United States or the State when engaged in the lawful performance of his or her duties;
- (8) While moving personal property including such weapon from a former residence to a new residence; or
- (9) In the case of a knife, if such knife is a household knife and there is reasonable ground for a person having and carrying the knife away from the household. (Ord. 1024 §1(part), 1980; Ord. 1589, 1999)

Sec. 9-32-40. Carrying dangerous weapons at public meetings.

(a) It is unlawful for any person, at any public meeting of any governmental body or agency in the City, to carry, use or wear any dangerous or deadly weapon, including but not by way of limitation, any pistol, revolver, rifle, shotgun, brass or artificial knuckles of any substances whatsoever, nunchakus or any knife having a blade greater than three and one-half (3½) inches in length or any knife having an appearance of a pocketknife, the blade of which can be opened by a flick of a button, pressure on the handle or other mechanical device.

(b) In addition to any other penalty imposed by law, every person convicted of any violation of this Section may be required to forfeit to the City such dangerous or deadly weapon.

(c) Nothing in this Section shall be construed to prohibit any law enforcement officer from carrying, wearing or using such weapon as shall be necessary in the proper discharge of his or her duties. (Ord. 1024 §1(part), 1980; Ord. 1589, 1999)

Sec. 9-32-50. Disposition of confiscated weapons.

(a) It shall be the duty of every police officer upon making any arrest and taking any dangerous weapon from the offender to deliver the same to the custody of the Chief of Police to be held by the same until the final determination of the prosecution for the offense. Upon the finding of guilt, the Municipal Judge shall order forfeiture of such weapon or instrument to the City.

(b) Any such dangerous weapon or instrument so forfeited shall remain in the custody of the Chief of Police until such weapon or instrument is duly disposed of.

(c) The Chief of Police shall on January 1 of each year, or more often at the sole discretion of the Chief of Police, account to the Municipal Judge for all weapons or instruments confiscated and ordered forfeited pursuant to this Article. The Chief of Police shall then make final disposition of the dangerous weapons as in his or her sole discretion is for the benefit of the health, safety and welfare of the citizens of the City. (Ord. 1024 §1(part), 1980; Ord. 1589, 1999)

Sec. 9-32-60. Issuance of concealed weapon permits.

(a) The Chief of Police is given authority to issue a dangerous or deadly weapon permit to the following persons subject to the terms and conditions of this Section:

- (1) Police officers of the City;
- (2) Reserve police officers of the City;

(3) Any other person over the age of eighteen (18) years upon a finding by the Chief of Police that all of the following conditions have been established:

- a. The person has established a need to carry such weapon;
- b. The person has determined proficiency in the care, maintenance and use of the particular weapon to be carried;
- c. The person has a record of good character, reputation and sobriety;
- d. The person has no record in the ten (10) years preceding the request for the permit of a:
1) felony conviction; or 2)-misdemeanor or municipal ordinance conviction pertaining to-moral character;
- e. The person has no history of drug addiction;
- f. The person has no history of violent acts against persons or property; and
- g. The person has no physical and/or mental conditions to warrant concern that the person will be unfit to carry such weapon.

(b) The Chief of Police is authorized to promulgate regulations and to provide any and all necessary forms for applications pursuant to this Section.

(c) All persons other than City police and reserve police officers shall pay to the City a nonrefundable application fee of twenty-five dollars (\$25.00) for the costs incurred by the City to process applications pursuant to this Section.

(d) All weapon permits issued under this Section shall expire as follows:

(1) Permits issued to City police and reserve police officers upon the person's terminating membership in the Police Department or the Reserve Police Association, as the case may be;

(2) Permits issued to all other persons, upon expiration of one (1) year from the date of issue, unless a different expiration period is specified on the permit; and

(3) To any person upon revocation as hereinafter provided.

(e) The Chief of Police shall have authority to immediately revoke any such weapon permit upon finding that a person no longer meets all conditions and requirements as set forth in Subsection (a) above, and shall have the authority to suspend for any period of time less than one (1) year any such weapon permit upon finding that a person temporarily fails to meet all conditions and requirements as set forth in Subsection (a) above, or in the case of a police officer or reserve police officer, upon suspension of such officer from duty.

(f) Upon revocation or suspension of such weapon permit, the person in possession of such permit shall immediately, upon notice of such revocation or suspension, return and surrender such permit to the Chief of Police.

(g) Any permit issued by the Chief of Police shall be effective in all areas of the State, unless specifically restricted on the face of the permit.

(h) All permits issued prior to the effective date of this Section are declared null and void. (Ord. 1024 §1(part), 1980; Ord. 1589, 1999)